

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW D. BOOKER,

Plaintiff,

-v-

9:11-CV-247
(DNH/GHL)

D. ROCK, Superintendent of Upstate
Correctional Facility, and MR. MARENELLI,
Psychologist, Upstate Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

MATTHEW BOOKER, 09-A-5397
Plaintiff pro se
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

ADELE M. TAYLOR-SCOTT
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 31, 2011, the Honorable George H. Lowe, United States Magistrate Judge, advised, by Report-Recommendation, that defendants' motion to dismiss for failure to state a claim

pursuant to Federal Rule of Civil Procedure 12(b)(6) be granted in part and denied in part.
Defendants timely filed objections to the Report-Recommendation.

Based upon a de novo review, the Report-Recommendation is accepted in whole.
See 28 U.S.C. 636(b)(1).

Therefore it is

ORDERED that

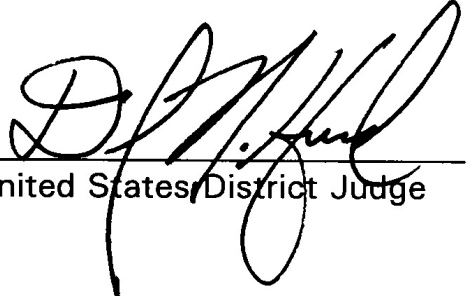
1. Defendants' motion to dismiss for failure to state a claim, Dkt. No. 17, is
GRANTED in part and DENIED in part;

2. Plaintiff's claims against defendant Rock are DISMISSED, with leave to amend;

3. Plaintiff's claims against DOCCS are DISMISSED, with prejudice; and

4. Defendant Marenelli is directed to answer the Eighth Amendment claim.

IT IS SO ORDERED.


United States District Judge

Dated: February 13, 2012
Utica, New York.